DATUK SYED KECHIK SYED MOHAMED & ANOR

v.

THE BOARD OF TRUSTEES OF THE SABAH FOUNDATION & ORS

FEDERAL COURT, KUALA LUMPUR
CHONG SIEW FAI CJ (SABAH & SARAWAK)
EDGAR JOSEPH JR FCJ
MOHAMED DZAIDDIN FCJ
[APPLICATIONS NO: 08-93-97(S) & 08-94-97(S)]
25 NOVEMBER 1998

CIVIL PROCEDURE: *Appeal - Leave to appeal - Leave to Appeal to Federal Court - Issues justifying a hearing before the Federal Court - Governing principles - Section 96(a) Courts of Judicature Act 1964 - Statutory prerequisites - Whether prerequisites thereof exclusive - Courts of Judicature Act 1964, s. 96(a) - Rules of the Federal Court 1995, rr. 107(1) & (2), 108(1)*

STATUTORY INTERPRETATION: *Courts of Judicature Act 1964, s. 96(a) - Purport and import of - Whether exclusive in effect*

In the High Court below, the applicants were unsuccessful in their attempt to strike out the respondents' actions for want of prosecution. The learned judge, apparently, had taken the view that it was the High Court Registry, and not the respondents, that caused the delay in the listing of the actions, and so rejected the applicants' argument that the respondents were guilty of "general disinterestedness" in the actions. The applicants appealed to the Court of Appeal but the the appeals were dismissed by the said court. Intending to appeal further, the applicants applied to the Federal Court for leave to appeal under s. 96(a) of the Courts of Judicature Act 1964 ('the Act'). Before the apex Court, the applicants argued in essence that leave ought to be granted as the applications had raised an important point of law, namely, whether "general disinterestedness" on the part of the plaintiff is by itself a sufficient ground for striking out an action.

Held:
Per Edgar Joseph Jr FCJ

[1] The application for leave to appeal to this court should set forth shortly, the facts and points of law of such general importance to make it appropriate for the consideration of this court and conclude with summarized reasons for leave to be granted. At the hearing, the argument, so far as it is possible, should be brief, succinct and concentrated.

[2] The circumstances for granting leave applications in the Federal Court are not limited to the two situations stated in s. 96(a) of the Act. Whilst the situations stated therein, namely "a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage" constitute the paramount considerations, they are not exclusive. An assessment of the prospects of success should leave be given is an important factor which the Federal Court must also consider. This aside, leave may also be granted, *inter alia*, upon consideration (i) of the utility of the decision of the Federal Court on the question of law as a means either to clarify or develop a general principle of law (ii) that there was a dissenting judgment in the Court of Appeal (iii) of the need to authoritatively restate the relevant law. It is to be noted, thus, that in applications for leave to appeal to this Court, "public importance" will have to be weighed against the features of the particular litigation.

[3] The Federal Court, in any case, would exercise its sensitive power to grant leave to appeal in civil cases sparingly and will not grant such leave unless ***both*** of the following criteria are satisfied by an intending appellant, namely (i) that the judgment of the Court of Appeal has raised a point of general principle which the Federal Court has not previously decided or a point of importance upon which further argument and a decision of the Federal Court would be to public advantage, and (ii) if so, that there is a *prima facie* case for success in the appeal – in the sense that he must demonstrate on ***first impression*** that the appeal ***might*** succeed.

[4] In the instant case, there was evidence to support the finding of Ian Chin J that the delay in the listing of the actions was the responsibility of the Registry and not the Respondents. There was also nothing to indicate that the summons/trial would have been listed more promptly if the Respondents had taken the additional step as suggested by the learned Judge. This court, in the circumstances, must uphold the Respondents' submission that such "general disinterestedness" as might have existed had no effect on the listings.

[4a] Even if "general disinterestedness" were established as a sufficient ground for want of prosecution, it would remain necessary for the applicants to establish that the delay was caused by the respondents' conduct, just as it is clearly established under the present law that a plaintiff must exhibit "inordinate and inexcusable delay". Clearly, in this case, an attempt to achieve a reversal of the orders of Ian Chin J would not have had any prospect of success.

[5] This court should also be especially cautious in granting leave to appeal herein, since the applications concerned interlocutory appeals arising from decisions refusing to strike out the two actions, which had been affirmed by the Court of Appeal.

[Applications for leave refused.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Di Mahkamah Tinggi di bawah, pemohon-pemohon telah gagal dalam usaha mereka untuk mengetepikan tindakan responden-responden atas alasan ketiadaan pendakwaan. Hakim yang bijaksana, kelihatannya, telah mengambil pandangan bahawa pihak Pejabat Pendaftaran Mahkamah Tinggi, dan bukannya responden-responden, bertanggungjawab atas kelewatan menyenarai tindakan, dan dengan itu menolak hujah pemohon-pemohon bahawa responden-responden telah menunjukkan sikap "general disinterestedness" terhadap tindakan mereka. Pemohon-pemohon merayu kepada Mahkamah Rayuan tetapi rayuan mereka ditolak oleh mahkamah tersebut. Berhajat untuk merayu seterusnya, pemohon-pemohon memohon kepada Mahkamah Persekutuan untuk kebenaran untuk merayu di bawah s. 96(a) Akta Mahkamah Keadilan 1964 ('Akta'). Di hadapan Mahkamah tertinggi, pemohon-pemohon berhujah secara intinya bahawa kebenaran harus diberi oleh kerana permohonan-permohonan berkenaan telah membangkitkan satu persoalan undang-undang yang penting, iaitu, samada "general disinterestedness" di pihak seorang plaintif secara bersendirian boleh menjadi alasan yang mencukupi untuk mengetepikan sesuatu tindakan.

Diputuskan:
Oleh Edgar Joseph Jr HMP

[1] Permohonan kebenaran untuk merayu kepada mahkamah ini hendaklah membentangkan secara rengkas fakta-fakta dan persoalan undang-undang yang mempunyai kepentingan awam bagi menjadikannya teratur untuk ditimbang oleh mahkamah ini dan merumuskannya dengan alasan-alasan padat kenapa kebenaran patut diberi.

[2] Halkeadaan-halkeadaan yang membolehkan permohonan kebenaran di Mahkamah Persekutuan diluluskan tidaklah terhad kepada dua keadaan yang dinyatakan dalam s. 96(a) Akta. Sementara kewujudan keadaan-keadaan yang dinyatakan di situ, iaitu, "suatu persoalan prinsip am yang diputuskan buat pertama kali atau suatu persoalan penting berkenaan mana hujah lanjut dan keputusan oleh Mahkamah Persekutuan akan memunafaatkan orang ramai" merupakan pertimbangan terpenting, syarat-syarat tersebut bukanlah eksklusif. Satu penilaian tentang prospek untuk berjaya sekiranya kebenaran diberi adalah juga faktor penting yang mesti ditimbang oleh Mahkamah Persekutuan. Selain itu, kebenaran juga boleh

diberi, antara lain, atas pertimbangan (i) kebergunaan keputusan Mahkamah Persekutuan berhubung persoalan undang-undang sebagai saluran samada untuk memperjelas atau memperkembangkan satu prinsip am undang-undang (ii) bahawa terdapat penghakiman menentang dalam keputusan Mahkamah Rayuan (iii) keperluan untuk menegaskan semula undang-undang berkaitan dengan secara autoritatif. Harus diperhatikan, dengan itu, bahawa dalam permohonan kebenaran untuk merayu kepada mahkamah ini, "kepentingan awam" hendaklah ditimbang dalam konteks ciri-ciri yang ada pada sesuatu litigasi.

[3] Mahkamah Persekutuan, walau apa pun, akan melaksanakan hak sensitifnya untuk memberi kebenaran untuk merayu dalam kes-kes sivil dengan cara berhati-hati dan tidak akan memberi kebenaran kecuali **kedua-dua** kriteria berikut dipenuhi oleh perayu berhajat, iaitu (i) bahawa penghakiman Mahkamah Rayuan telah membangkitkan suatu perkara yang menyangkut prinsip am yang belum pernah diputuskan oleh Mahkamah Persekutuan atau suatu perkara penting berhubung mana hujahan lanjut dan keputusan Mahkamah Persekutuan akan memunafaatkan orang ramai, dan (ii) jika demikian, bahawa wujud kes *prima facie* untuk berjaya dalam rayuan – dalam ertikata pemohon harus menunjukkan pada **imbasan pertama** bahawa rayuannya **mungkin** berjaya.

[4] Dalam kes semasa, terdapat keterangan untuk menyokong dapatan Ian Chin H bahawa kelewatan dalam menyenarai tindakan adalah disebabkan oleh pihak Pejabat Pendaftaran dan bukannya oleh responden. Selain itu, tidak terdapat apa-apa yang menunjukkan bahawa saman/perbicaraan akan disenaraikan lebih awal jika responden-responden mengambil langkah seperti yang dicadangkan oleh Hakim yang arif. Mahkamah ini, dalam halkeadaan sedemikian, harus menerima hujah responden bahawa "general disinterestedness", jikapun wujud, tidak mempunyai apa-apa kesan terhadap penyenaraian.

[4a] Jikapun "general disinterestedness" didapati menjadi alasan yang mencukupi bagi ketiadaan pendakwaan, ianya masih perlu bagi pemohon-pemohon untuk membuktikan bahawa kelewatan adalah disebabkan oleh tindak-tanduk responden-responden, sepertimana undang-undang semasa menetapkan bahawa seseorang plaintif itu harus menunjukkan "inordinate and inexcusable delay". Adalah jelas, dalam kes semasa, bahawa apa pun percubaaan untuk membatalkan perintah-perintah yang dibuat oleh Ian Chin H tidak ada prospek untuk berjaya.

[5] Mahkamah ini juga tidak cenderung untuk memberi kebenaran untuk merayu di sini, kerana permohonan-permohonan terbabit menyangkut rayuan-rayuan interlokutori yang berbangkit dari keputusan tidak mahu mengetepikan kedua-dua tindakan, keputusan yang mana telahpun disahkan oleh Mahkamah Rayuan.

[Permohonan untuk kebenaran ditolak.]

Cases referred to:

Ainsbury v. Millington [1987] 1 All ER 929 ***(foll)***
Beecham Group Ltd v. Bristol Laboratories Ltd [1967] Bar Transcript No 110 ***(foll)***
Buckle v. Holmes [1926] 2 KB 125 ***(cit)***
Datuk Syed Kechik Syed Mohamed & Anor v. The Board Of Trustees Of The Sabah Foundation & Ors & Another Appeal [1998] 3 CLJ 169 ***(refd)***
Dick v. New York Life Insurance Co 359 US 437 ***(refd)***
Fisher v. Oldham Corporation [1930] 2 KB 364 ***(foll)***
George H Nolan [1956] (Pvt) Ltd v. HA Watson & Co Ltd (1965) Bar Transcript No 98 ***(foll)***
Modern Engineering v. Gilbert – Ash [1974] AC 715 ***(refd)***
Pang Hon Chin v. Nahar Singh [1986] 2 MLJ 145 ***(refd)***
Re Armstrong [1886] XVII QBD 521 ***(cit)***
Re Wilson [1985] 2 WLR 694 ***(refd)***
Sun Life Assurance Company of Canada v. Jervis [1944] AC 111 ***(foll)***
The Board Of Trustees Of The Sabah Foundation & Ors v. Datuk Syed Kechik Syed Mohamed & Anor [1997] 3 CLJ 118 ***(refd)***
Wednesbury Corporation v. Ministry of Housing and Local Government (1965) House of Lords Journals ***(foll)***

Legislation referred to:

Courts of Judicature Act 1964, s. 96(a)
Rules of the Federal Court 1995, rr. 107(1), (2), 108(1)

For the applicants - John Cherryman (Douglas Lind & Datuk Lawrence SH Thien with him); M/s Chau & Thien
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JUDGMENT

Edgar Joseph Jr FCJ:

We sat for two days hearing these two applications made pursuant to the provisions of s. 96(a) of the Courts of Judicature Act 1964 (Act 91), for leave b to appeal from the orders of the Court of Appeal dismissing the Applicants' appeals from orders of Mr. Justice Ian Chin refusing to strike out the Respondents' actions in Suit No. 351 of 1997 and Suit No. 352 of 1997 for want of prosecution, and, at the conclusion of the arguments, we reserved our decision until the next day when we dismissed the same, with an intimation c that we would be delivering a judgment in writing on a date to be announced. This we now do. The Applicants are the Defendants and the Respondents are the Plaintiffs.

It is not the practice of this Court, nor as we understand it, the practice of the House of Lords, when sitting in its judicial capacity hearing applications d for leave to appeal, to give explicit reasons for granting or refusing leave, save in circumstances where their Lordships considered that they had no jurisdiction to entertain the application.

We would interpolate to remark that, unlike in this country, the sieve for e English civil appeals to the House of Lords operates at two levels, that is to say, in the Court of Appeal and in the House of Lords.

Having said that, we hasten to add, in the words of Lord Diplock speaking in the House of Lord in *Modern Engineering v. Gilbert – Ash* [1974] AC at p. 715, 716: "Refusal of leave to appeal does not imply approval by this House f of a judgment sought to be appealed against. That judgment carries the same authority as any other unappealed judgment of the Court of Appeal – neither more nor less." With this statement of principle we respectfully agree. The natural tendency, therefore, to claim that a judgment of the Court of Appeal which has been the subject of an unsuccessful application for leave to appeal g carries greater authority than one which has gone unchallenged, must be resisted.

The only reason why we thought it desirable that we should give a judgment in writing in this case is because it affords us the opportunity to offer guidance, without in any way attempting to establish a rigid framework into which all h new situations must be forced, when considering applications for leave to appeal from the judgments of the Court of Appeal to this Court in civil matters which, so far as relevant to the present case, are now controlled by the new s. 96(a) of the Courts of Judicature Act, 1964 which provides:

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96. Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court –

(a) from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage.

First of all, we should like to make the preliminary observation that the Federal Court as an apex court, is a court apart, in the sense, that over and above its role as a tribunal of review, it performs the vital function of supervising the process of judicial law-making which is such an integral part of our common law system modified by statute. It is therefore salutary to remind ourselves of what Lord Roskill said, with reference to the right of appeal to the House of Lords, (which we venture to suggest should apply with equal force, in principle, to this Court) in *In re Wilson* [1985] 2 WLR 694 at 698 C to D:

Your Lordships' House is only able, in any given year, to hear and determine a limited number of cases and it is important for the evolution of the law as a whole that those cases should be carefully chosen.

Similarly, here is what Mr. Justice Frankfurter said, with reference to the right of appeal to the United States Supreme Court, in *Dick v. New York Life Insurance Co.,* 359 U.S. 437, 458-9 (1959):

... the judgments of this Court are collective judgment. Such judgments presuppose ample time and freshness of mind for private study and reflection in preparation for discussion at conference. Without adequate study there cannot be adequate reflection; without adequate reflection there cannot be adequate discussion; without adequate discussion there cannot be that fruitful interchange of minds which is indispensable to thoughtful unhurried decision and its formulation in learned and impressive decisions. It is, therefore, imperative that the docket [i.e. list of cases for hearing] be kept down so that its volume does not preclude wide adjudication. This can be avoided only if the Court rigorously excludes any case from coming here that does not rise to the significance of inevitability in meeting the responsibilities vested in this Court.

Next, we need hardly emphasise that the application for leave to appeal to this Court should set forth shortly, the facts and points of law of such general importance as to make it appropriate for the consideration of this Court and conclude with summarized reasons for leave being granted. See also, r. 107(1) and (2) of the Rules of the Federal Court 1995 as amended by P.U(A) 379/98 for the formal requirements.

At the hearing of the application for leave, so far as it is possible to do so, the argument should be brief, succinct and concentrated.

Where leave to appeal is granted, the order granting leave may specify the matters appearing in r. 108(1).

As for appeals to the Court of Appeal where leave is required, these are dealt with in accordance with the principles enunciated in *Pang Hon Chin v. Nahar Singh* [1986] 2 MLJ 145. At first blush, one would think that on principle, the criteria for granting leave to appeal to the Federal Court (as in the House of Lords in England) should be more demanding. But, we note that under the relevant statutory provision with which we are concerned – to wit, s. 96(a) of the Courts of Judicature Act 1964 – statutory recognition has been given to two of the three examples of issues as stated in *Pang Hon Chin* which justify a hearing before the Federal Court. In this regard, *Pang Hon Chin* relied upon the words of Esher MR in *Ex parte Gilchrist, In re Armstrong* [1886] XVII QBD 521, 528 and Bankes LJ in *Buckle v. Holmes* [1926] 2 KB 125, 127. The one example given in *Pang Hon Chin* which has been conspicuously omitted from s. 96(a), is "where the applicant is able to demonstrate a *prima facie* case of error." Moreover, taking s. 96(a) at its full face value, the circumstances for granting leave applications in the Federal Court appear to be *limited* to the two situations stated therein, namely, "a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage."

So, does it mean that under s. 96(a) all that an intending appellant for leave to appeal to the Federal Court needs to demonstrate is that the judgment of the Court of Appeal raises a point of law of the kind contemplated by the section and nothing more?

We think not. The paramount consideration is, of course, that the judgment of the Court of Appeal must in the language of s. 96(a) raise a question of general principle not previously decided by the Federal Court or a question of importance on which further argument and a decision of the Federal Court would be to public advantage **but** these criteria are, in our view, *not* exclusive.

An assessment of the prospects of success should leave be given is, of course, an important factor which the Federal Court would have to take into account. So, for example, in *Wednesbury Corporation v. Housing and Local Government* (1965) House of Lords Journals, the Appeals Committee of the House of Lords had, on 19 October 1965, refused the plaintiff's application for leave to appeal to the House of Lords and Lord Reid, in the course of argument in the application for leave to appeal, made the following revealing observation to Counsel for the plaintiff:

> I think the public importance of it is fairly clear, but you have also got, of course, to establish that there is a point of general importance to put before the House, and that you have a *prima facie* case for success.

Indeed, in the present case, it was this factor which we took into consideration when dismissing the applications. But, we hasten to add, that an application for leave should be dismissed not so much on the case – although that may have a bearing on the result of the application – as on the degree of public importance and on the necessity of the legal issue being finally resolved by the Federal Court.

Still on the present case, the point of law which the Applicants had relied in seeking leave to appeal was whether "general disinterestedness" on the part of a plaintiff is a sufficient ground by itself for striking out an action. Even if learned Counsel for the Applicants were correct in his contention that "general disinterestedness" by itself was a ground for striking out of an action for want of prosecution, – and this is a point upon which we express no view – with respect, we were not persuaded that the facts were such that the action should be struck out on that ground.

More particularly, there was evidence to support the finding of Mr. Justice Ian Chin that in the delay the listing of the actions was the responsibility of the Registry and not of the Respondents. To take the point further, there was nothing to indicate that even if the Respondents had taken the additional steps suggested by the learned Judge the summons/trial would have been listed more promptly. Indeed, the record provided showed that numerous requests by the Respondents for listing were consistently ignored by the Registry. We, therefore, upheld the submission of learned Counsel for the Respondents that such "general disinterestedness" as might have existed had no effect on the listings. In our view, therefore, even if "general disinterestedness" were established as a sufficient ground for want of prosecution, it would remain necessary for a defendant to establish that the delay was caused by the plaintiff's conduct just as it is clearly established under the present law that a plaintiff must exhibit "inordinate and inexcusable delay". In those circumstances, we were of the view, that any attempt to achieve a reversal of the orders of Ian Chin J would not have had *any* prospect of success.

The second factor which we took into consideration when dismissing these applications was this: because they concerned interlocutory appeals arising from decisions refusing to strike out the two actions, which had been affirmed by the Court of Appeal, this Court should be especially cautious in granting leave to appeal. To quote Lord Denning MR in *Beecham Group Ltd v. Laboratories Ltd.* [1967] Bar Transcript No. 110 "We do not as a rule grant leave to appeal in interlocutory appeals." The important factor here is the need for a speedy end to litigation.

For the avoidance of doubt, we consider it desirable to go further and lay down a more precise formulation of the principles governing the grant of leave to appeal to this Court, without in any way attempting to be exhaustive, so that other factors not dealt with here may, on occasion, have to be taken into consideration.

Of cardinal importance would be the utility of the decision of the Federal Court on the question of law as a means either to clarify and develop a general principle of law in a manner likely to provide the solution to many different individual problems or of providing the answer to a specific question of a recurring nature in practice.

Consequently, the mere fact that the judgment of the Court of Appeal has raised a point of general principle does not necessarily make it appropriate for consideration by the Federal Court; for if a decision depends on the application of a well established principle to an individual set of facts, a further appeal to the Federal Court will be of no utility if it will do nothing to clarify or refine the principle, so as to make it applicable to other situations in the future.

But, if an intending appellant could demonstrate that the judgment of the Court of Appeal raises a point of law of great general importance upon which there has been a consistent current of judicial opinion which may have been uniformly wrong, that may well be enough for leave to be granted. *Fisher v. Oldham Corporation* [1930] 2 KB 364 was a case where the question at issue was one of great importance to the public and illustrates how 'a line of authorities' may gradually grow in the wrong direction because one important precedent has escaped attention.

Similarly, a particular fact situation may be most unlikely to recur in the same form but yet may exemplify a type of situation on which authoritative guidance of the Federal Court would be of great utility.

On the other hand, in the field of contract, in a "one-off contract", to wit, a contract which has been specially drafted for the parties to cater for a particular in language which is unlikely to be reproduced in future contracts, or a "one-off situation", that is to say, a set of facts which is unlikely to be repeated in practice, that would be a good ground for exercising the discretion against the grant of leave.

However, where the same point of law has already occurred in a series of current disputes, even if the circumstances are only generally in *pari materia*, in other words, not precisely the same, there might well be justification for granting leave to appeal to the Federal Court. The case for the grant of leave would, of course, be stronger where the dispute turns upon the interpretation of contracts or clauses in general use in a particular trade.

Having said that, this Court does not sit to decide abstract or academic or hypothetical questions of law regarding which the parties are not in dispute. Thus, in *Ainshury v. Millington* [1987] 1 All ER 929 Lord Bridge said this:

> It has always been a fundamental feature of our judicial system that the Courts decide dispute between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.

To the same effect is the case of *Sun Life Assurance Company of Canada v. Jervis* [1944] AC 111, which shows that the House of Lords cannot deal with academic questions, in which either or both parties is not interested in the result of the appeal.

Again, a dissenting judgment in the Court of Appeal may be a decisive factor in considering whether to grant leave to appeal. See eg, *George H. Nolan [1956] (Pvt) Ltd v. H.A. Watson & Co. Ltd.* (1965 Bar Transcript No 98) in which leave was granted "in view of the difference of opinion."

Yet, again, as Lord Roskill said in *Re Wilson* (*ibid* at p. 698 C to D):

> It may well be that leave is given in order that the relevant law may be authoritatively restated in clearer terms.

It will be seen, therefore, that in application for leave to appeal to this Court, "public importance" will have to be weighed against the features of the particular litigation.

One final point. Does it necessarily follow, that in *all* cases where there is no real doubt as to the law on a particular point, leave to appeal *must* necessarily be refused? The answer to this question is provided by these opening remarks of Bankes LJ in *Buckle v. Holmes (ibid),* (a mundane case on the facts, in which the question was whether a cat is an animal for whose trespass its owner is liable). Here is what his Lordship said (at p. 127):

> We gave leave to appeal in this case, not because we thought there was any real doubt about the law, but because the question was one of general importance and one upon which further argument and a decision of this Court would be to the public advantage.

It is obvious that the alternative statutory criteria for the grant of leave under s. 96(a), merely repeats the statement of principle enunciated by Bankes, LJ quoted above.

To sum up, without prejudice to the generality of what we have thus far said, the Federal Court exercises its sensitive power to grant leave to appeal in civil cases sparingly and will not grant such leave unless *both* of the following criteria are satisfied by an intending appellant:

(1) the judgment of the Court of Appeal has raised a point of general principle which the Federal Court has not previously decided or a point of importance upon which further argument and a decision of the Federal Court would be to public advantage; *and*

(3) if the point is decided in favour of the intending appellant, there is a *prima facie* case for success in the appeal.

For the avoidance of doubt, we would make the following observations regarding criteria (2), (taken from Lord Reid's revealing observation to Counsel in the *Wednesbury Corporation* case, quoted above), which requires the court to form a provisional view of the outcome of the appeal. It is not necessary for an intending appellant to demonstrate a probability and a reasonable likelihood of the appeal succeeding in the event of leave being granted because to impose such a requirement would be very near to actually hearing the appeal itself. All he need demonstrate is that on *first impression*, the appeal **might** succeed. But nothing short of that will suffice.